

Exhibit A

Exhibit A

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County of San Joaquin
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SHEILA GIANELLI
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Plaintiff in Pro Per

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STK-CV-UMR-2021-0000849

SUPERIOR COURT OF CALIFORNIA

SAN JOAQUIN COUNTY

SHEILA GIANELLI,
Plaintiff,

CASE NO:

COMPLAINT

vs

Trial Date: None Set

RONALD STEVEN
SCHOENFELD, DEBRA LEE
SILVER, LANCE SCHULTZ,
NICK DUJMOVICH, PACIFIC
GAS & ELECTRIC COMPANY,
a California corporation, and Does
1 through 10,

Defendants.

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1 Plaintiff, Sheila Gianelli, alleges as follows:

2 **NATURE OF ACTION**

- 3 1. Ms. Gianelli was hired by PG&E in December of 2013. In the summer of 2014 her third
4 level supervisor, Defendant Lance Schultz, (“SCHULTZ”) asked her to review her first level
5 supervisor’s transportation budget, as it was one million dollars over budget at the end of
6 May 2014. Immediately after reviewing the budget and supporting information, Ms.
7 Gianelli discovered and thereafter reported a criminal conspiracy which was defrauding
8 PG&E of millions of dollars annually to the company’s Compliance and Ethics helpline in
9 August of 2014. Ms. Gianelli was then interviewed by the Federal Bureau of Investigations.
10 Federal felony charges were filed against one of the perpetrators of the fraud, Defendant
11 Ronald Schoenfeld (“SCHOENFELD”). He plead guilty to one count of Conspiracy to
12 Commit Wire Fraud, a felony under 18 U.S.C. § 371 in case number 2:20-cr-00150-KJM in
13 the United States District Court for the Eastern District of California. SCHOENFELD
14 admitted he formed a conspiracy with his cousin, Defendant Debra Silver (“SILVER”) to
15 establish an entity, All American Logistics, LLC, (“AAL”) for the purpose, and in
16 furtherance, of defrauding Defendant PG&E. In January of 2021, SCHOENFELD was
17 sentenced to twenty-two months in federal prison and ordered to pay \$1.4 million in
18 restitution. The criminal conspiracy had been effective from 2006 to 2014, costing PG&E
19 an estimated \$8.7 million.
- 20 2. Shortly after Ms. Gianelli reported the criminal activity in 2014, she was retaliated against
21 by her second and third level supervisors. Her second level supervisor, Defendant Nick
22 Dujmovich, (“DUJMOVICH”), met with Ms. Gianelli and her first level supervisor. Both
23 reported to DUJMOVICH the circumstances and evidence of the criminal enterprise.
24 DUJMOVICH, who was a close personal friend of SCHOENFELD’s, refused to report it

1 further. Ms. Gianelli, after waiting ten (10) days, was forced to report the criminal
2 enterprise to the Compliance and Ethics Hot Line. DUJMOVICH thereafter told Ms.
3 Gianelli directly that she had “made the mess, so she had to clean it up.” He blamed her,
4 and directed her to rebuild the entire transportation sourcing and management process, a task
5 with responsibilities and qualifications three grade levels above her then current position.
6 When Ms. Gianelli responded to him that the criminal conspiracy was not her fault, and that
7 she was doing work above her pay level, he told her that her concerns were, in his words,
8 just a “Bitch Session.”

9 3. Her third level supervisor, SCHULTZ, upon hearing Ms. Gianelli’s concerns about the
10 potential fraud, criminal activity, and that she was being retaliated against by DUJMOVICH,
11 simply and directly stated to her, “[she] should not have reported it.” SCHULTZ refused to
12 do anything to help Ms. Gianelli, approving and joining in DUJMOVICH’s retaliation,
13 including, but not limited to approving the lowest performance reviews, bonus payouts, and
14 performance raises possible.

15 4. Ms. Gianelli endured this retaliation from her direct supervisors, being defamed by them to
16 the entire organization, being ostracized by her colleagues, and the emotional distress of
17 bearing the burden of opposing criminal conduct alone. Ms. Gianelli finally escaped the
18 corrupt, unethical, and sexist supply chain organization at PG&E on August 7, 2017.

19 **PARTIES**

20 5. Plaintiff, Sheila Gianelli, is an individual residing in San Joaquin County.

21 6. Ms. Gianelli is informed and believes, and thereon alleges SCHOENFELD was, at all times
22 relevant herein, a resident of the State of California.

23 7. Ms. Gianelli is informed and believes, and thereon alleges SILVER was, at all times relevant
24 herein, a resident of the State of California.

8. Ms. Gianelli is informed and believes, and thereon alleges SCHULTZ was, at all times relevant herein, a resident of the State of California.

9. Ms. Gianelli is informed and believes, and thereon alleges DUJMOVICH was, at all times relevant herein, a resident of the State of California.

10. Ms. Gianelli is informed and believes, and thereon alleges, that PG&E is a corporation organized and existing under the laws of the State of California with its principal place of business in San Francisco, California.

VENUE AND JURISDICTION

11. Venue is appropriate in Superior Court for the County of San Joaquin as it is the principal place of business for the Defendant AAL, the place of residence for Ms. Gianelli, and SILVER, as well as a place of business for PG&E, and the individual defendants were/are employees or independent contractors of PG&E during all relevant times employed and/or doing business in San Joaquin County.

12. This Complaint has common issues of fact and law such that this court should exercise concurrent jurisdiction over the federal causes of action.

BACKGROUND AND FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF

ACTION

13. In November of 2006, SCHOENFELD and SILVER, who are cousins, formed a criminal enterprise. The terms of the criminal enterprise are identified and admitted to by a co-conspirator, SCHOENFELD more particularly described in his Plea Agreement in his criminal case listed above and attached at Exhibit A to this Complaint.

14. As admitted by SCHOENFELD, he was hired by PG&E in August of 2006, and his co-conspirator cousin SILVER established the entity AAL in November, 2006. SILVER

1 offered to pay SCHOENFELD 2.5% of the value of all contracts he procured for her from
2 PG&E. SCHOENFELD accepted. On May 23, 2007, SCHOENFELD created a
3 corporation, Diversity Transportation, Inc. to facilitate kickback payments from AAL. From
4 May 2007 to September 2014, SCHOENFELD received at least \$1,476,295.15 in kickback
5 payments from AAL for the aid he provided SILVER. SCHOENFELD caused payroll
6 checks to be issued to his various financial accounts, and then wired money from those
7 accounts to pay for his personal expenses, notably on March 16, 2015 and April 14, 2015 to
8 his American Express card. These funds were proceeds of the conspiracy with SILVER.
9 SCHOENFELD was aware his kickback arrangement was not allowed by PG&E, and he
10 took active steps to conceal his relationship with SILVER and AAL from PG&E. He
11 avoided having social meetings at locations where other PG&E employees might be present.
12 SCHOENFELD used personal electronic mail to communicate with SILVER regarding
13 payments to be made pursuant to the scheme to conceal their actions from PG&E. Money
14 from this conspiracy received by AAL and SILVER originated in Louisiana, passed through
15 Virginia or Texas, and were ultimately deposited in accounts in California controlled by
16 AAL and SILVER. The criminal conspiracy as described above is referred to as the
17 “Criminal Enterprise.”

18 15. Three (3) individuals at PG&E moved from a private employer in the State of Michigan to
19 take jobs in the Supply Chain organization at PG&E. This group was referred to by
20 employees in the Fleet Chain organization as the “Michigan Mafia.” SCHOENFELD joined
21 this group, and met with them frequently outside of PG&E facilities, usually weekly.
22 DUJMOVICH was a member of the “Michigan Mafia.” After Ms. Gianelli reported the
23 Criminal Enterprise and SCHOENFELD was fired, the remaining three (3) members (or
24 original members) left PG&E and work for the same employer in Texas, including

1 DUJMOVICH.

2 16. In 2013, Ms. Gianelli interviewed for a two different Manager positions at PG&E in the
3 Supply Chain/Materials organization.

4 17. Ms. Gianelli has a B.S. in Industrial Engineering from Purdue University and an M.B.A
5 from University of the Pacific. She has 27+ years' experience in Supply Chain Management
6 including 6 years at the Director level.

7 18. During the interview process for the Distribution Manager Position, Vice President Gun
8 Shim posed the question, "That is a male dominated department, how would you handle
9 yourself over there?" VP Shim was referencing that the Director, SCHULTZ does not now,
10 nor to Ms. Gianelli's knowledge, has ever had a female direct report under him. Ms.
11 Gianelli was not offered the Distribution Manager position, which was offered to, and
12 accepted by, a male. She was, however, offered interview for a Transportation Manager
13 position.

14 19. Ms. Gianelli proceeded with the interview process for the Transportation Manager position.
15 She was interviewed by SCHOENFELD and DUJMOVICH, who stated they were the
16 decision makers for the hire. The explained she was in the running for the position with one
17 other person. Ms. Gianelli was not offered the Transportation Manager position, which was
18 offered to, and accepted by, a male, Jim Henderson.

19 20. DUJMOVICH thereafter contacted Ms. Gianelli and pursued her for another position, albeit
20 the lowest position he could offer. He stated the organization needed her expertise and
21 experience, and repeatedly enticed her to join the organization. After several discussions
22 with DUJMOVICH she did accept PG&E's offer for the position of Analyst in the Supply
23 Chain organization.

24 21. Ms. Gianelli's immediate supervisor was the person she had interviewed against for the

1 Transportation Manager position, Jim Henderson. DUJMOVICH became her second level
2 supervisor, and SCHULTZ her third.

3 22. At the inception of this position, two items became immediately clear to Ms. Gianelli. One,
4 Mr. Henderson had no experience or knowledge for the position in which he was hired, and
5 two, DUJMOVICH repeatedly told Ms. Gianelli not to look at anything associated with
6 Transportation and SCHOENFELD. At the time of this statement, 2013-14,
7 SCHOENFELD had procured almost \$80 million to AAL and was responsible for sending
8 AAL and SILVER tens of millions annually.

9 23. Mr. Henderson, as Manager, had oversight of a multi-million dollar transportation budget.
10 A large portion of which was being serviced under the Criminal Enterprise. Immediately
11 after hiring Mr. Henderson, knowing his actions would go unquestioned, SCHOENFELD
12 ratcheted up the profit for the Criminal Enterprise. In January 2014, SCHOENFELD
13 increased the amount PG&E paid AAL for moving transformers from one vehicle to another
14 from \$125 per unit to \$275 per unit. SCHOENFELD unilaterally did this, and Mr.
15 Henderson did not question it. In March of 2014, SCHOENFELD increased the rates PG&E
16 paid to AAL from \$1.30 per mile to \$1.60 per mile, again, without any approvals from Mr.
17 Henderson, and again, without any questioning from Mr. Henderson.

18 24. At this point, Mr. Henderson's transportation budget was on pace to be over by \$2 million at
19 year's end. This red flag alerted PG&E, who in turn raised the issue with the Director of the
20 Supply Chain/Materials organization, SCHULTZ. After being unable to determine the
21 cause of the over-budget issue with anyone else in his organization, SCHULTZ directed Ms.
22 Gianelli to examine it.

23 25. In the summer of 2014, Ms. Gianelli, at the direction of SCHULTZ, Ms. Gianelli for the first
24 time had oversight of the transportation budget subject to Criminal Enterprise. Within days

1 Ms. Gianelli had acquired evidence of unethical and irregular procurement. Ms. Gianelli
2 conveyed her findings to her colleague, Mario Carrasco, who agreed to accompany her to a
3 meeting with SCHOENFELD to inquire directly with him about the irregularities.

4 SCHOENFELD admitted to authorizing the irregularities, stating he had to do it alone as
5 Mr. Henderson, who should have been involved in the approval, “had no idea what he was
6 doing.” SCHOENFELD had just hired Mr. Henderson months earlier. After
7 SCHOENFELD and Mr. Carrasco had left the room and I was alone, SCHOENFELD
8 returned and cornered me in the room. He asked a couple of times to Ms. Gianelli, “if he
9 and I were ok?” meaning if Ms. Gianelli was willing to “look the other way.” Ms. Gianelli,
10 fearing for her safety, replied, “sure, we are ok,” and exited the office and facility as fast as
11 she could.

12 26. Ms. Gianelli then raised her concerns to her first level manager, Mr. Henderson. He agreed
13 to assist Ms. Gianelli with bringing her concerns forward to PG&E. They both met with
14 DUJMOVICH, a personal friend and member of the “Michigan Mafia” with
15 SCHOENFELD. At this meeting, it was immediately apparent DUJMOVICH was covering
16 for SCHOENFELD. Ms. Gianelli and Mr. Henderson left it with DUJMOVICH, as their
17 supervisor, to report the issues to PG&E. DUJMOVICH did not report it. Ever. Instead, he
18 covered for his friend, SCHOENFELD and the Criminal Enterprise.

19 27. After ten (10) days, Ms. Gianelli’s character mandated she act. She unilaterally reported the
20 Criminal Enterprise to the PG&E Ethics and Compliance hot line. Immediately, the Internal
21 Audit division opened a case and started an investigation. The Internal Audit department
22 requested Ms. Gianelli’s assistance, without the knowledge of DUJMOVICH, and their
23 investigation resulted in SCHOENFELD’s termination from PG&E.

24 28. In his departure, SCHOENFELD and the “Michigan Mafia” group let it be known Ms.

1 Gianelli had lied, was wrong, and SCHOENFELD would be filing a wrongful termination
2 lawsuit.

3 29. Her colleagues ostracized and shunned Ms. Gianelli. SCHOENFELD had groomed
4 relationships with people in the organization for years. One particularly telling example
5 relates to Mr. Henderson's predecessor, Jeff Thomas. SCHOENFELD also had authority
6 over procurement of PG&E's fleet vehicles, a spend of hundreds of millions. Mr. Thomas,
7 during a meeting with Ms. Gianelli and Mr. Henderson, directly offered, "Ya, Ron got me a
8 great deal on my car with [a PG&E fleet vendor]." The Criminal Enterprise had infiltrated
9 the entire Supply Chain organization, and Ms. Gianelli was seen as the pariah and treated as
10 such.

11 30. The diversity newsletter for PG&E, "Powered by Diversity", identified SILVER and AAL
12 numerous times for awards. It pronounced AAL the "Vendor of the Year" in 2009.
13 SILVER, in accepting these awards, thanked who she identified as her mentor, SCHULTZ.

14 31. After SCHOENFELD was fired and AAL contracts were terminated as a result of their
15 Criminal Enterprise, Ms. Gianelli was directly retaliated against by SCHULTZ and
16 DUJMOVICH. DUJMOVICH thereafter told Ms. Gianelli directly that she had "made the
17 mess, so she had to clean it up" - as if the Criminal Enterprise was her idea. Nevertheless,
18 he blamed her, and directed as a condition of her future employment, Ms. Gianelli to rebuild
19 the entire transportation sourcing process, a task with responsibilities and qualifications
20 multiple grade levels above her then current position. When Ms. Gianelli responded to him
21 that the criminal conspiracy was not her fault, and that she was doing work above her pay
22 level, he told her that her concerns were, in his words, just a "Bitch Session."

23 32. Her third level supervisor, SCHULTZ, after Ms. Gianelli told him directly of the retaliation
24 against her by DUJMOVICH, simply ignored her concerns and seemed to Ms. Gianelli not

1 to care at all about the retaliation. SCHULTZ refused to do anything to help Ms. Gianelli,
2 thereafter ratifying and approving DUJMOVICH's retaliation, including, but not limited to
3 approving for her the lowest performance reviews, bonus payouts, and performance raises
4 possible. These reviews were just short of identifying Ms. Gianelli as an employee that
5 failed to meet expectations of the role and thereby set her upon a path for termination for
6 cause. SHULTZ agreed that after Ms. Gianelli had saved company millions, alone helped
7 effectuate the removal of the Criminal Enterprise, and rebuilt the system to prevent a
8 reoccurrence of future fraudulent activities, she was deserving only of the bare minimum
9 performance reviews and pay.

10 33. Ms. Gianelli then took her requests to prohibit DUJMOVICH from retaliating to her to
11 PG&E's human resources departments. After several discussions with them, SCHULTZ
12 moved Ms. Gianelli to a warehouse position in Fremont, California, a demotion in visibility
13 to other company leadership and opportunity for professional growth. This placement by
14 SCHULTZ was intended to limit Ms. Gianelli's job responsibilities and professional growth,
15 stifle the use of her 20+ years' experience in supply chain management, suppressing her
16 visibility and convey the clear message to the entire organization of what happens to
17 employees who identify criminal activities, and diminish to outright exterminate her ability
18 to be promoted.

19 34. Instead of stopping the retaliation of DUJMOVICH and censoring his illegal conduct,
20 SCHULTZ approved the promotion of DUJMOVICH to Director under another member of
21 the "Michigan Mafia", Dave Meisel.

22 35. To avoid the continual retaliation, Ms. Gianelli was forced to seek roles outside of her area
23 of expertise, supply chain management. As further and continuous retaliation, SCHULTZ
24 tried to stop her exit from his organization, refusing to agree to her taking a role outside his

1 organization. However, human resources overrode his request and approved her new role,
2 which was outside his control, on August 7, 2017.

3 36. Since escape from the sexist and corrupt Supply Chain/Materials organization, Ms.
4 Gianelli's career with PG&E has flourished. She has received "exceeds expectations"
5 performance reviews and been promoted twice, all verifying the despicable treatment she
6 was subjected to for three years as a direct result of exposing the Criminal Enterprise.

7 37. As a direct and proximate result of the Criminal Enterprise and retaliation, Ms. Gianelli
8 suffered the following adverse employment actions, ("Adverse Employment Actions"):

- 9 a. Ms. Gianelli was not hired into a role she was qualified for because the
10 interviewers and decision makers were actively involved with, and subsequently
11 plead guilty to, federal felonies for their ongoing criminal conspiracy to defraud
12 PG&E of millions of dollars over a period of eight (8) or more years, only stopped
13 by the actions of Ms. Gianelli to uncover and report the criminal activity.
- 14 b. Suppression of any ideas, thoughts, plans, recommendations, such that her
15 position with colleagues was undermined and her value to the company, and in
16 the industry diminished.
- 17 c. Ms. Gianelli was ostracized by her colleagues.
- 18 d. Despite doing what no male could do or had done, despite having the opportunity
19 to do; namely, uncover the evidence of fraud and criminal conspiracy which
20 saved the Defendant company millions of dollars and resulted in a criminal
21 conviction of federal felony charges, Ms. Gianelli received a "meets expectation"
22 from the very supervisor, DUJMOVICH, that refused to report the criminal
23 activity when Ms. Gianelli provided him clear, uncontroverted, and overwhelming
24 evidence of criminal activity. It is a grossly amoral and cowardly act to not only

1 fail to act in the face of clear criminal activity, but also to then retaliate against
2 Ms. Gianelli by documenting in her personnel file by way of her annual review
3 she “meets expectations”; her courageous actions were barely enough for her to
4 remain employed with Defendant. This review was written by DUJMOVICH and
5 confirmed by SCHULTZ.

6 e. In response to Ms. Gianelli placing her own person and family’s safety at risk, the
7 attendant emotional distress for standing up to the Criminal Enterprise and the
8 “Michigan mafia”, Ms. Gianelli was awarded the bare minimum cost of living
9 increase. This minimum cost of living raise was written by DUJMOVICH and
10 approved by SCHULTZ.

11 f. Ms. Gianelli informed SCHULTZ directly of the retaliation. SCHULTZ refused
12 to acknowledge or investigate Ms. Gianelli’s well founded allegations of
13 retaliation. Ms. Gianelli was abandoned by SCHULTZ, her claims ignored, and
14 she was forced to remain employed under DUJMOVICH, despite being directed,
15 as a condition of employment, the task of rebuilding the system the
16 SCHOENFELD had erected to embezzle millions. Ms. Gianelli was forced to
17 choose between staying in her current position and endure the ongoing retaliation
18 or quit her employment.

19 g. The following year Ms. Gianelli continued to complain of retaliation to human
20 resources, SCHULTZ answered their request by physically moving her position to
21 a warehouse in Fremont, California, a more difficult commute from the
22 professional offices in San Ramon, California, and a demotion in terms of
23 visibility and opportunity for professional growth.

24 h. As a means to escape the retaliation short of quitting her job, Ms. Gianelli sought

1 out other positions in the company and secured a temporary assignment with
2 Mario Carassco. SCHULTZ tried to stop Ms. Gianelli from taking a temporary
3 assignment opportunity at the onset and throughout the one year term of the
4 temporary assignment. After an initial period of temporary assignment, Ms.
5 Gianelli requested release from SCHULTZ so she could accept the permanent
6 position with Mario. As a means of further retaliation, SCHULTZ refused to
7 release Ms. Gianelli, demanding she return to her old position at the warehouse,
8 and reporting up the chain of command to SCHULTZ again. Ms. Gianelli was
9 forced to fight and plead, begging to be released. With the assistance and support
10 of Mr. Carassco, human resources intervened and allowed Ms. Gianelli's release
11 from SCHULTZ's organization and control.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 38. Ms. Gianelli exhausted her administrative remedies or will exhaust her administrative
14 remedies by filing a complaint against Defendant company named herein with the California
15 Department of Fair Employment and Housing within three years from the date of Defendant
16 company's last adverse employment action, and thereafter receiving her "Right-to-Sue"
17 letter on January 23, 2021.

18
19 **FIRST CAUSE OF ACTION VIOLATION OF CALIFORNIA**

20 **LABOR CODE SECTION 1102.5**

21 39. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through
22 38 inclusive, above, as though fully set forth herein.

23 40. California Labor Code Section 1102.5 prohibits retaliation by an employer against an
24 employee for disclosing, or because the employer believes the employee may disclose,

1 information to a government or law enforcement agency, to a person with authority over the
2 employee, or another employee who has the authority to investigate, discover, or correct the
3 violation or noncompliance, if the employee has reason to believe that the information
4 discloses a violation of state or federal statute, or a violation of a rule or noncompliance with a
5 local, state, or federal rule or regulation.

6 41. Defendants took Adverse Employment Actions against Ms. Gianelli in substantial part
7 because they believed she would disclose, and actually did disclose and provide the
8 evidence of the Criminal Enterprise.

9 42. As a direct and proximate result of the acts of Defendants, as alleged above, Ms. Gianelli
10 has suffered and will continue to suffer economic damages, including lost wages and other
11 compensatory damage in an amount to ascertain at the time of trial.

12 43. As a further direct and proximate result of the acts of Defendants, as alleged above, Ms.
13 Gianelli has suffered and will continue to suffer mental and emotional distress, including but
14 not limited to humiliation, anxiety, nervousness, and depression and has been generally
15 damaged in an amount to be ascertained at the time of trial.

16 44. As a direct and proximate result of the acts of Defendants, as alleged above, Ms. Gianelli
17 has and will incur attorneys' fees and costs in an amount to be proven at the time of trial.
18 Pursuant to the provisions of Code of Civil Procedure Section 1021.5, or any other provision
19 allowed by law, Ms. Gianelli is entitled to the reasonable value of such attorneys' fees and
20 costs.

21 45. As a direct and proximate result of the conduct of Defendants, Ms. Gianelli was forced to
22 incur or will incur substantial costs and attorneys' fees. Under Labor Code § 1102.5 as
23 amended, Ms. Gianelli is entitled to recover reasonable attorney's fees according to proof at
24 the time of trial.

1 46. The above-described acts of Defendants, which were carried out by managing agents were
2 willful, intentional, and carried out in conscious disregard of the rights and safety of Ms.
3 Gianelli as well as members of the public. As such, in committing the above-described acts,
4 Defendants acted with malice and with the intent to vex, injure and annoy Ms. Gianelli,
5 thereby warranting the imposition of exemplary and punitive damages in an amount
6 sufficient to punish said Defendants and to deter other from engaging in similar conduct.
7

8 **SECOND CAUSE OF ACTION FOR ADVERSE EMPLOYMENT ACTION IN**
9 **VIOLATION OF PUBLIC POLICY (*TAMENY CLAIM*)**

10 47. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through
11 46 inclusive, above, as though fully set forth herein.

12 48. Ms. Gianelli was, at all relevant times plead herein, and currently is, an employee of PG&E.

13 49. Defendants took adverse employment actions against Ms. Gianelli in substantial part
14 because they feared she would disclose, and eventually did disclose, information to a
15 government or law enforcement agency, to a person with authority over the employee, or to
16 another employee who has the authority to investigate, discover, or correct the violation or
17 noncompliance, based on her reasonable belief that the information disclosed a violation of
18 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule
19 or regulation. Specifically, Defendants took these adverse employment actions against Ms.
20 Gianelli because they feared she would disclose, and eventually did disclose the Criminal
21 Enterprise, and the discriminatory treatment of employees based upon gender.

22 50. Defendants' adverse employment actions against Ms. Gianelli were and are contrary to the
23 public policy embodied in Labor Code Section 1102.5, subdivision (b), which prohibits
24 employer retaliation against any employee who reports a reasonably suspected violation of

the law to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance. Section 1102.5 reflects the broad public policy interest in encouraging workplace “whistleblowers,” who may without fear of retaliation report concerns regarding an employer’s illegal conduct.

51. Defendants’ adverse employment actions taken against Ms. Gianelli violated fundamental principles of public policy of protecting whistleblowers as described above and as codified in Labor Code Section 1102.5.

52. Defendants’ conduct, as described hereinabove, also violated the policy of the State of California, as evidenced by the enactment of the FEHA (Govt. Code Section 12940, *et seq.*) Specifically, Defendants took adverse employment actions against Ms. Gianelli on the basis of her gender and subjected her to discriminatory treatment and comments.

53. As a direct and proximate result of Defendants, Ms. Gianelli has suffered harm, including lost earnings, lost future earnings, and other employment benefits, and humiliation, embarrassment, and mental anguish. Ms. Gianelli is therefore entitled to general and compensatory damages in an amount according to proof at trial.

54. Defendants’ action described herein were done with a conscious disregard for the rights of Ms. Gianelli and with the intent to vex, injure, annoy Ms. Gianelli such as to constitute oppression, fraud or malice under California Civil Code Section 3294 and to entitle Ms. Gianelli to punitive damages in an amount appropriate to punish or set an example of Defendants.

THIRD CAUSE OF ACTION DISCRIMINATION BASED ON SEX IN VIOLATION OF

FEHA [Govt. Code Section 12940 et seq.]

1 55. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through
2 54 inclusive, above, as though fully set forth herein.

3 56. Defendant, and Does 1-10, inclusive, and each of them are employers subject to California
4 Government Code Section 12940.

5 57. The California Fair Employment and Housing Act (“FEHA”) prohibits an employer from
6 taking adverse employment actions against a protected individual based on her sex. Adverse
7 employment action include, without limitation, discharging from employment, refusing to
8 transfer/promote, refusing to hire, and discriminating in compensation, terms and conditions
9 or privileges of employment. “Sex” includes, but is not limited to, a person’s gender. Govt.
10 Code Section 12926(r).

11 58. Ms. Gianelli began working for PG&E in December, 2013.

12 59. Defendants’ discriminatory practices against Ms. Gianelli are evidenced by its hiring
13 practices and promotion opportunities. During Ms. Gianelli’s first interview, she met with
14 Vice President Gun Shim, who expressed animosity and skepticism toward Ms. Gianelli
15 based on her gender; asking specifically, “This department is male dominated, how do you
16 plan to deal with that?” Besides being an admission his department had a disparate impact
17 against females, Ms. Gianelli was left in the awkward situation of having to either stand up
18 for her civil rights or admit she would defer to the male dominated department to avoid any
19 disruption of a “boys’ club” atmosphere. In another interview, SCHOENFELD attempted to
20 dominate the interview with a discussion of wine, as Ms. Gianelli had previously been
21 employed at Gallo Wineries. It was clear neither of these men were interested in Ms.
22 Gianelli’s 20+ year employment history in supply chain management or hiring her for the
23 Transportation Manager role.

24 60. Ms. Gianelli believes and therefore alleges, SCHULTZ’s department did not, at the time of

1 Ms. Gianelli's first interview, have female managers, and has not had one to the date of this
2 filing.

3 61. Despite Ms. Gianelli having many accomplishments, including, but not limited to the
4 exposure of the Criminal Enterprise and rebuilding of that system, she was subjected to
5 adverse employment actions. During one meeting, SCHULTZ expressly gave credit to Mr.
6 Carassco for Ms. Gianelli's work. Several times Mr. Carassco stated to SCHULTZ he did
7 not do the work, Ms. Gianelli did, and deserves the accolades. Each time, SCHULTZ
8 refused to acknowledge Ms. Gianelli, who was in the room.

9 62. Ms. Gianelli was required to complete work several pay grades above her position, but was
10 paid far less than the male counterparts who complete the same or similar work.

11 63. Ms. Gianelli is informed and believes and thereon alleges that Defendants took adverse
12 employment action on the basis of her gender, and that any reason stated otherwise is mere
13 pretext.

14 64. The discriminatory actions of Defendant against Ms. Gianelli constitute unlawful
15 discrimination on the basis of sex in violation of FEHA, codified in Government Code
16 Section 12945(a).

17 65. The above-mentioned sex-based discriminatory actions and impact further reveal
18 Defendants' discriminatory attitude about women and their value in the workplace. Upon
19 information and belief, had Ms. Gianelli been a man, Defendant would have treated her with
20 far more respect and promoted her, and certainly would have paid her more for the quality of
21 work she produced.

22 66. As a proximate result of the acts of Defendants, as described above, Ms. Gianelli has
23 suffered and will continue to suffer economic damages, including lost wages, lost benefits,
24 loss of promotional opportunity, and other compensatory damages in an amount to be

ascertained at trial.

67. As a proximate result of the acts of Defendants, Ms. Gianelli suffered and continues to suffer humiliation, emotional and mental distress, anxiety and stress and has been generally damaged in an amount to be ascertained at the time of trial.

68. As a direct and proximate result of the conduct of Defendants, Ms. Gianelli was forced to incur substantial costs and attorneys' fees. Under Government Code Section 129659(b), Ms. Gianelli is entitled to recover reasonable attorney's fees according to proof at the time of trial.

69. The acts of Defendant were intentional, willful and malicious, carried out by the managing agents, and done in conscious disregard of Ms. Gianelli's rights, safety and wellbeing and with the intent to vex, injure and annoy her. As such, Ms. Gianelli request that exemplary and punitive damaged be assessed against each of these Defendants in an amount to sufficient to punish Said Defendant and to deter other from engaging in similar conduct.

FOURTH CAUSE OF ACTION UNLAWFUL RETAILIATION IN VIOLATION OF
FEHA [Govt. Code Section 129409(h)]

70. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through 69 inclusive, above, as though fully set forth herein.

71. California Government Code Section 12940(h) prevents an employer from retaliating against an employee who complains and/or opposes any discrimination or harassment under FEHA or for exercising her rights under FEHA.

72. Ms. Gianelli opposed and protested what she reasonably believed to be unlawful discrimination and retaliation against her by Defendant. Ms. Gianelli opposed the discrimination by repeatedly requesting equal pay and by raising complaints for a pay

1 differential as compared to the work she was doing and her male colleagues.

2 **FIFTH CAUSE OF ACTION FOR VIOLATION OF RICO, 18 U.S.C. § 1962(c)**

3
4 73. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through
5 72 inclusive, above, as though fully set forth herein.

6 74. This Cause of Action is against Defendants SCHOENFELD, SILVER, DUJMOVICH, and
7 SCHULTZ.

8 75. AAL is an enterprise engaged in and whose activities affect interstate commerce.
9 SCHOENFELD and SILVER are employed by or associated with the enterprise.

10 76. SCHOENFELD and SILVER conducted the Criminal Enterprise as previously stated in
11 paragraphs 14 and 15. SCHOENFELD and SILVER agreed to and did conduct and
12 participate in the conduct of the enterprise's affairs through a pattern of racketeering activity
13 for the unlawful purpose of intentionally defrauding PG&E. More specifically described in
14 the admitted facts of SCHOENFELD in his Plea Agreement at Exhibit A: SCHOENFELD
15 and SILVER conspired to and did defraud PG&E of millions of dollars through a scheme of
16 artificially inflating the transportation charges of AAL, creating processes to charge
17 unnecessary fees to PG&E, and used confidential information to bid and secure contracts
18 between PG&E and AAL valued at over \$80 million dollars from 2006 to 2014.
19 SCHOENFELD passed along confidential pricing information from PG&E to SILVER,
20 allowing SILVER and SCHOENFELD to inflate the charges to PG&E and profit to AAL.
21 SILVER and SCHOENFELD agreed SILVER would pay him 2.5% of the value of all
22 contracts she received through AAL from PG&E.

23 77. Pursuant to and in furtherance of their fraudulent scheme, the SCHOENFELD and SILVER
24 committed multiple related acts of wire fraud in violation of 18 U.S.C. § 1343.

1 78. Defendants DUJMOVICH and SCHULTZ committed acts of racketeering activity by
2 retaliating against Ms. Gianelli in violation of 18 U.S.C. § 1513(e). Ms. Gianelli reported
3 the offenses of federal crimes of SHOENFELD and SILVER during an in person interview
4 and phone conversations with the Federal Bureau of Investigations in late 2014 and/or early
5 2015. The Federal Bureau of Investigations is a “law enforcement” agency as defined by 18
6 U.S.C. § 1515.

7 79. DUJMOVICH and SCHULTZ’s retaliation was an intentional interference with her
8 employment and livelihood as defined by 18 U.S.C. § 1513(e) specifically intended to
9 punish Ms. Gianelli for uncovering the Criminal Enterprise of SCHOENFELD, who was
10 DUJMOVICH’s personal friend, and SILVER, for which SHULTZ was her mentor. The
11 specific acts of retaliation and interference are listed above as the Adverse Employment
12 Actions.

13 80. The acts of the Criminal Enterprise set forth above constitute a pattern of racketeering
14 activity pursuant to 18 U.S.C. § 1961(5).

15 81. The Defendants listed in this cause of action have directly and indirectly conducted and
16 participated in the conduct of the enterprise’s affairs through the pattern of racketeering and
17 activity described above, in violation of 18 U.S.C. § 1962(c).

18 82. As a direct and proximate result of these Defendant’s racketeering activities and violations
19 of 18 U.S.C. § 1962(c), Ms. Gianelli has been injured in her business and property in that:
20 Ms. Gianelli was not hired for the Manager position by SCHOENFELD, so that
21 SCHOENFELD could instead hire Mr. Henderson, thereby protecting the Criminal
22 Enterprise and racketeering activity, and that she was retaliated against for exposing the
23 Criminal Enterprise and racketeering activity and the Adverse Employment Actions were
24 taken against her.

SIXTH CAUSE OF ACTION FOR VIOLATION OF RICO, 18 U.S.C. § 1962(d)

83. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through 82 inclusive, above, as though fully set forth herein.

84. This Cause of Action is against Defendants SCHOENFELD and SILVER. As set forth above, SCHOENFELD and SILVER agreed and conspired to violate 18 U.S.C. § 1962(a) (b) and (c). Specifically: SCHOENFELD and SILVER conspired to and did conduct the Criminal Enterprise as stated above. SCHOENFELD and SILVER conspired to conduct and participate in the affairs of the enterprise through a pattern of racketeering activity (§ 1962(c)). SCHOENFELD admitted each element of this federal offense in his Plea Agreement and was sentenced for Conspiracy to Commit Wire Fraud 18 U.S.C. § 371. SCHOENFELD admitted his conspiracy was with his co-conspirator, SILVER.

85. SCHOENFELD and SILVER have intentionally conspired and agreed to directly and indirectly use or invest income that is derived from a pattern of racketeering activity in an interstate enterprise, acquire or maintain interests in the enterprise through a pattern of racketeering activity, and conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

86. SCHOENFELD and SILVER knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C.A. § 1962(a), (b) and (c), in violation of 18 U.S.C. § 1962(d).

87. As a direct and proximate result of these Defendant's racketeering activities and violations of 18 U.S.C. § 1962(d), Ms. Gianelli has been injured in her business and property in that: Ms. Gianelli was not hired for the Manager position by SCHOENFELD, so that

1 SCHOENFELD could instead hire Mr. Henderson, thereby protecting the Criminal
2 Enterprise and racketeering activity, and that she was retaliated against for exposing the
3 Criminal Enterprise and racketeering activity and the Adverse Employment Actions were
4 taken against her.

5
6 **SEVENTH CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA EQUAL**
7 **PAY ACT, AS AMENDED CAL. LABOR CODE § 11975.5 AND THE FEDERAL**
8 **EQUAL PAY ACT, 29 U.S.C. § 206(d)**

9 88. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through
10 87 inclusive, above, as though fully set forth herein.

11 89. SHULTZ, DUJMOVICH, and PG&E have discriminated against Ms. Gianelli in violation of
12 California Labor Code § 1197.5 and the Federal Equal Pay Act, 29 U.S.C. § 206(d) by
13 paying her at wage rates less than the wage rates paid to male employees for substantially
14 equal or similar work, when viewed as a composite of skill, effort, and responsibility, and
15 performed under similar working conditions, from her date of hire to August 7, 2017.

16 90. SHULTZ, DUJMOVICH, and PG&E willfully violated California Labor Code § 1197.5 and
17 the federal Equal Pay Act, 29 U.S.C. § 206(d) by intentionally, knowingly, and deliberately
18 paying Ms. Gianelli less than men for substantially equal or similar work from her date of
19 hire to August 7, 2017.

20 91. As a result of SHULTZ, DUJMOVICH, and PG&E's conduct, violation of California Labor
21 Code § 1197.5 and the Federal Equal Pay Act, 29 U.S.C. § 206(d), and/or their willful,
22 knowing and intentional discrimination, Ms. Gianelli has suffered and will continue to suffer
23 harm, including but not limited to lost earnings, lost benefits, and other financial loss, as
24 well as non-economic damages. Ms. Gianelli is therefore entitled to all legal and equitable

remedies available under law, including wages, interest, and liquidated damages.

EIGHTH CAUSE OF ACTION FOR CIVIL CONSPIRACY

92. Ms. Gianelli repeats and repleads and incorporates by this reference, paragraphs 1 through 91 inclusive, above, as though fully set forth herein.

93. Defendants SCHOENFELD, SILVER, DUJMOVICH, AND SCHULTZ (“Civil Conspiracy Defendants”) conspired to create AAL, award transportation contracts to AAL, and to protect AAL.

94. In furtherance of this conspiracy, the Civil Conspiracy Defendants artificially inflated the capabilities of AAL, chose AAL to supply services to PG&E over other competitors, and influenced other employees at PG&E to do the same. Each of these acts in furtherance of the conspiracy were done with the actual knowledge, or should have been know through the exercise of reasonable diligence, that the conspiracy promoted a criminal enterprise to defraud PG&E as stated elsewhere and above. Civil Conspiracy Defendants, and each of them, were required to protect the criminal enterprise by actively deceiving others at PG&E, holding meetings outside the facilities of PG&E, restrain from using written communications, and retaliate against any PG&E employee or agent who threatened the criminal enterprise. Such despicable conduct of these wrongful acts makes each Civil Conspiracy Defendants responsible as joint tortfeasors for all damages ensuing from the wrongs stated herein.

95. As stated elsewhere and in the above Causes of Action, the conduct of the Civil Conspiracy Defendants caused harm, and continues to cause harm, to Ms. Gianelli in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Ms. Gianelli requests that this Court enter judgment as follows:

Compensatory damages according to proof at trial;

Treble damages against RICO Defendants;

Attorney's fees as provided by statute;

For all wages due pursuant to California Labor Code § 1157.5 and the Federal Equal Pay Act, 29

U.S.C. § 206(d) in an amount to be ascertained at trial;

For liquidated damages pursuant to California Labor Code § 1157.5 and the Federal Equal Pay

Act, 29 U.S.C. § 206(d);

For prejudgment interest on unpaid wages at a rate of 10% per annum pursuant to California

Labor Code § 1157.5 and California Civil Code §§3287-8, and/or any other applicable provision

providing for prejudgment interest;

Trial by Jury; and

For such further relief that the Court may deem just and proper.

Dated: January 27, 2021

By Sheila Gianelli
Sheila Gianelli

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD STEVEN SCHOENFELD,

Defendant.

CASE NO. 2:20-CR-150-KJM

PLEA AGREEMENT

DATE: August 31, 2020
TIME: 9:00 AM
COURT: Hon. Kimberly J. Mueller

I. INTRODUCTION

A. Scope of Agreement.

The Information in this case charges the defendant with violating 18 U.S.C. § 371 – Conspiracy to Commit Honest Services Fraud (“Count One”) and 18 U.S.C. § 1956 –Monetary Laundering (“Counts Two through Three”). This document contains the complete Plea Agreement between the United States Attorney’s Office for the Eastern District of California (the “government”) and the defendant regarding this case. This Plea Agreement is limited to the United States Attorney’s Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

B. Court Not a Party.

The Court is not a party to this Plea Agreement. Sentencing is a matter solely within the discretion of the Court, and the Court may take into consideration any and all facts and circumstances concerning the criminal activities of defendant, including activities which may not have been charged in

the Information. The Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this Plea Agreement.

If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this Plea Agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

II. DEFENDANT'S OBLIGATIONS

A. Guilty Plea.

The defendant will plead guilty to Count One – 18 U.S.C. § 371 (Conspiracy to Commit Honest Services Fraud). The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

The defendant agrees that this Plea Agreement will be filed with the Court and become a part of the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his plea should the Court not follow the government's sentencing recommendations.

The defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this Agreement generally.

B. Waiver of Indictment.

The defendant acknowledges that under the United States Constitution he is entitled to be indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed. R. Crim. P. 7(b), he agrees to waive any and all rights he has to being prosecuted by way of indictment to the charges set forth in the Information. The defendant agrees that at a time set by the Court, he will sign a written waiver of prosecution by Indictment and consent to proceed by Information

rather than by Indictment.

C. Waiver of Statue of Limitation.

The defendant understands that he has a right under 18 U.S.C. § 3282 to have the criminal charges resolved by this Agreement brought within 5 years of the commission of the offenses. The defendant acknowledges that, through counsel, he previously requested the opportunity to confer with the United States and conduct investigation and legal research prior to any charges being filed in this matter and in furtherance of a potential pre-indictment resolution of possible criminal charges. The defendant further acknowledges that, through counsel, he previously executed written agreements tolling the otherwise applicable statute of limitations in this matter. The defendant expressly waives the statute of limitations as a defense to the criminal charges being resolved by this Plea Agreement.

D. Restitution.

The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of certain offenses. The defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims affected by this offense, including, but not limited to, the victims covered in the factual basis and other victims as a result of the defendant's conduct for the offenses charged from the periods through in or about August 2006 through in or about February 2015. The amount of restitution has not yet been determined, but may be up to \$1,476,295.15. The government's position is that the amount of restitution to be paid to the victim is \$1,476,295.15. The defendant may argue to the Court that that he believes the restitution amount is otherwise, pursuant to the relevant legal authorities.

Restitution payments shall be made by cashier's or certified check made payable to the Clerk of the Court.

The defendant further agrees that he will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding.

E. Fine.

The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury

to the Probation Officer and the government in advance of the issuance of the draft Presentence Investigation Report, along with supporting documentation. The government retains the right to oppose the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered by the Court, up to the statutory maximum fine for the defendant's offense.

F. Special Assessment.

The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering a check or money order payable to the United States District Court to the United States Probation Office immediately before the sentencing hearing. The defendant understands that this Plea Agreement is voidable at the option of the government if he fails to pay the assessment prior to that hearing.

G. Violation of Plea Agreement by Defendant/Withdrawal of Plea.

If the defendant violates this Plea Agreement in any way, withdraws his plea, or tries to withdraw his plea, this Plea Agreement is voidable at the option of the government. If the government elects to void the Agreement based on the defendant's violation, the government will no longer be bound by its representations to the defendant concerning the limits on criminal prosecution and sentencing as set forth herein. A defendant violates the Plea Agreement by committing any crime or providing or procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in any litigation or sentencing process in this case, or engages in any post-plea conduct constituting obstruction of justice. Varying from stipulated Guidelines application or agreements regarding arguments as to 18 United States Code Section 3553, as set forth in this Agreement, personally or through counsel, also constitutes a violation of the Plea Agreement. The government also shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this Plea Agreement; and (3) to file any new charges that would otherwise be barred by this Plea Agreement. The defendant shall thereafter be subject to prosecution for any federal criminal violation of which the government has knowledge. The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

By signing this Plea Agreement, the defendant agrees to waive any objections, motions, and defenses that the defendant might have to the government's decision. Any prosecutions that are not

time-barred by the applicable statute of limitations as of the date of this Plea Agreement may be commenced in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of any such prosecutions. The defendant agrees not to raise any objections based on the passage of time with respect to such counts including, but not limited to, any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as of the date of this Plea Agreement. The determination of whether the defendant has violated the Plea Agreement will be under a probable cause standard.

In addition, (1) all statements made by the defendant to the government or other designated law enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal, whether before or after this Plea Agreement, shall be admissible in evidence in any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by the defendant before or after this Plea Agreement, or any leads derived therefrom, should be suppressed. By signing this Plea Agreement, the defendant waives any and all rights in the foregoing respects.

H. Asset Disclosure.

The defendant agrees to make a full and complete disclosure of his assets and financial condition, and will complete the United States Attorney's Office's "Authorization to Release Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change of plea, including supporting documentation. The defendant also agrees to have the Court enter an order to that effect. The defendant understands that if he fails to complete truthfully and provide the described documentation to the United States Attorney's office within the allotted time, he will be considered in violation of the Agreement, and the government shall be entitled to the remedies set forth above in paragraph II.G.

I. Agreement to Cooperate.

The defendant agrees to cooperate fully with the government and any other federal, state, or local law enforcement agency, as directed by the government. As used in this Plea Agreement, "cooperation"

requires the defendant: (1) to respond truthfully and completely to all questions, whether in interviews, in correspondence, telephone conversations, before a grand jury, or at any trial or other court proceeding; (2) to attend all meetings, grand jury sessions, trials, and other proceedings at which the defendant's presence is requested by the government or compelled by subpoena or court order; (3) to produce voluntarily any and all documents, records, or other tangible evidence requested by the government; (4) not to participate in any criminal activity while cooperating with the government; and (5) to disclose to the government the existence and status of all money, property, or assets, of any kind, derived from or acquired as a result of, or used to facilitate the commission of, the defendant's illegal activities or the illegal activities of any conspirators.

III. THE GOVERNMENT'S OBLIGATIONS

A. Dismissals/Other Charges.

The government agrees to move, at the time of sentencing, to dismiss without prejudice the remaining counts in the pending Information. The government also agrees not to reinstate any dismissed count except if this Agreement is voided as set forth herein, or as provided in paragraphs II.G (Violation of Plea Agreement by Defendant/Withdrawal of Plea), VI.B (Stipulated Guideline Calculation), and VII.B (Waiver of Appeal and Collateral Attack).

B. Recommendations.

1. Incarceration Range.

The government will recommend that the defendant be sentenced to the low end of the guideline range as stipulated in paragraph VI.B below.

2. Acceptance of Responsibility.

The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

3. Reduction of Sentence for Cooperation.

The government agrees to recommend at the time of sentencing that the defendant's sentence of imprisonment be reduced by up to 15% of the applicable guideline sentence if he provides substantial assistance to the government, pursuant to U.S.S.G. § 5K1.1. The defendant understands that he must comply with paragraphs II.I and not violate this Plea Agreement as set forth in paragraph II.G herein. The defendant understands that it is within the sole and exclusive discretion of the government to determine whether the defendant has provided substantial assistance.

The defendant understands that the government may recommend a reduction in his sentence of less than 15% or no reduction at all; depending upon the level of assistance the government determines that the defendant has provided.

The defendant further understands that a motion pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not binding on the Court, that this Plea Agreement confers no right upon the defendant to require that the government make a § 5K1.1 motion, and that this Plea Agreement confers no remedy upon the defendant in the event that the government declines to make a § 5K1.1 motion. In particular, the defendant agrees not to try to file a motion to withdraw his guilty plea based on the fact that the government decides not to recommend a sentence reduction or recommends a sentence reduction less than the defendant thinks is appropriate.

If the government determines that the defendant has provided further cooperation within one year following sentencing, the government may move for a further reduction of his sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

C. Use of Information for Sentencing.

The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following

elements of the offenses to which the defendant is pleading guilty, 18 U.S.C. § 371 (Conspiracy to Commit Wire Fraud).

Although *not* elements of Conspiracy to Commit an Offense Against the United States, in violation of 18 U.S.C. § 371, the elements of the underlying criminal offense (Wire Fraud, in violation of 18 U.S.C. § 1343) are:

- a. The defendant knowingly participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;
- b. The statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;
- c. The defendant acted with the intent to defraud; that is, the intent to deceive or cheat; and
- d. The defendant used, or caused to be used, an interstate wire communication to carry out or attempt to carry out an essential part of the scheme.

Pursuant to 18 U.S.C. § 1346, the term “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

Thus, to convict the defendant at trial on the charge of Conspiracy to Commit an Offense Against the United States, in violation of 18 U.S.C. § 371 (Count One), the government would have to prove beyond a reasonable doubt that:

- a. Beginning at least as early as November 2006, and ending in or about February 2015, there was an agreement between two or more people to commit honest services fraud as charged in the Information;
- b. The defendant became a member of the conspiracy knowing at least one of its objects and intending to help accomplish it; and
- c. One of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

The defendant fully understands the nature and elements of the crimes charged in the Information to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with his attorney.

V. MAXIMUM SENTENCE

A. Maximum Penalty.

The maximum sentence that the Court can impose is five years of incarceration, a fine of \$250,000, a three year period of supervised release and a special assessment of \$100. By signing this Plea Agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count to which he is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

B. Violations of Supervised Release.

The defendant understands that if he violates a condition of supervised release at any time during the term of supervised release, the Court may revoke the term of supervised release and require the defendant to serve up to two additional years imprisonment.

VI. SENTENCING DETERMINATION

A. Statutory Authority.

The defendant understands that the Court must consult the Federal Sentencing Guidelines and must take them into account when determining a final sentence. The defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines and must take them into account when determining a final sentence. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. The defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

B. Stipulated Guideline Calculation.

The government and the defendant agree that there is no material dispute as to the following sentencing guidelines variables and therefore stipulate to the following:

1 1. **Base Offense Level:** The base offense level for the charges to which the
2 defendant is pleading guilty is **6**. See U.S.S.G. §§ 2X1.1 and 2B1.1(a)(1).

3 2. **Specific Offense Characteristics:**

4 a. The parties agree and stipulate that fourteen levels are added (+**14**) under
5 U.S.S.G. § 2B1.1, because the defendant received kickback payments pursuant to
6 the scheme that exceeded \$500,000 but not more than \$1,500,000. See id. at
(b)(1)(H). However, the parties rely on distinct applications of the relevant
Guidelines provisions to reach this undisputed conclusion.

7 1) The government's position is that all of the kickback money should
8 have gone to PG&E and not to the defendant, and is therefore loss to
9 PG&E. Thus, fourteen levels are added because the loss attributable to the
10 defendant during the time period of his knowing involvement in the
conspiracy and within the scope of his knowing involvement exceeded
\$500,000 but was not more than \$1,500,000. Id. at (b)(1)(H).

11 2) The defendant's position is that PG&E suffered a loss but that loss
12 reasonably cannot be calculated, and the court should therefore use the
13 gain to the defendant that resulted from the offense as an alternative
measure of loss. See U.S.S.G. § 2B1.1, Application Note 3(B). Thus,
14 fourteen levels are added because the gain to the defendant during the time
period of his knowing involvement in the conspiracy and within the scope
of his knowing involvement exceeded \$500,000 but was not more than
\$1,500,000. Id. at (b)(1)(H); 2B1.1, Application Note 3(B).

15 3) The parties agree that resolution of this dispute will not affect the
16 applicable sentencing range and may impact only the Court's
determination of a restitution order.

17 3. **Preliminary Offense Level:** The parties anticipate that the preliminary offense
18 level will be **20**.

19 4. **Adjustments:** Three levels are subtracted (-**3**) if the defendant pleads guilty,
20 accepts responsibility for his offense, and the Specific Offense Level is above 16. U.S.S.G. §3E1.1.

21 5. **Adjusted Offense Level:** Given the stipulations above, the parties anticipate that
22 the adjusted offense level will be **17**.

23 6. **Criminal History and Sentencing Range:** The parties agree and stipulate that
24 the applicable criminal history will be determined by the Court's probation officers. The parties
25 estimate, but do not stipulate, that the defendant's criminal history category will be **I**, and that the
26 Guidelines sentencing range will be no less than **24 to 30 months** in prison. The defendant understands
27 that if the criminal history category differs from the parties' estimate, his Guidelines sentencing range
28 may differ from that set forth here.

C. Departures or Other Enhancements or Reductions:

The parties agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments (other than the decrease for “Acceptance of Responsibility”), or cross-references, except that the government may move for a departure or an adjustment based on a post-plea obstruction of justice (U.S.S.G. §3C1.1). Both parties agree not to move for, or argue in support of, any departure from the Sentencing Guidelines. However, the defendant may seek a variance from the Sentencing Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005), and may argue for any sentence supported by the facts and law. The government may oppose the defendant’s request for any sentence below the low-end of the applicable Guideline range.

VII. WAIVERS

A. Waiver of Constitutional Rights.

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack.

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed the statutory maximum for the offense to which he is pleading guilty. The defendant understands that this waiver includes, but is not limited to, any and all constitutional and/or legal challenges to the defendant’s conviction and guilty plea, including arguments that the statutes to which defendant is pleading guilty are unconstitutional, arguments that the applicable statute of limitations period set forth in 18 U.S.C. § 3282 have expired, and any and all claims that the statement of facts attached to this agreement is insufficient to support the defendant’s plea of guilty. The defendant

specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.G herein.

C. Waiver of Attorneys' Fees and Costs.

The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and prosecution of all charges in the above-captioned matter and of any related allegations (including without limitation any charges to be dismissed pursuant to this Plea Agreement and any charges previously dismissed).

VIII. ENTIRE PLEA AGREEMENT

Other than this Plea Agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

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IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea Agreement.

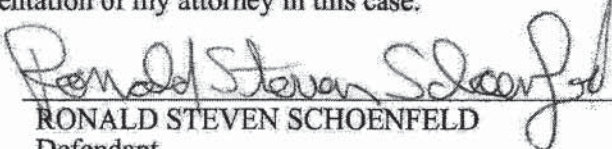
Dated: 8/7/20


CHRIS CANNON
Attorney for Defendant

B. Defendant:

I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea Agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 8/7/20


RONALD STEVEN SCHOENFELD
Defendant

C. Attorney for United States:

I accept and agree to this Plea Agreement on behalf of the government.

Dated: August 10, 2020

MCGREGOR W. SCOTT
United States Attorney



TANYA B. SYED
Assistant United States Attorney

EXHIBIT “A”

Factual Basis for Plea

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

In August 2006, defendant Ronald SCHOENFELD was hired by Pacific Gas & Electric Company (“PG&E”) to oversee PG&E’s trucking contracts. As an employee, SCHOENFELD owed PG&E his honest services. Specifically, PG&E’s employee code of conduct included numerous policies that SCHOENFELD agreed to comply with, including the following:

- “Disclose any potential conflict of interest to your supervisor, and ensure that the appropriate decision-maker concurs in writing if you’re allowed to remain in a situation that could be perceived as a conflict of interest.”
- “If, during non-business hours, you solicit vendors or customers with whom you interact for PG&E, you must ensure that your solicitation does not create an appearance of impropriety or in any way imply that the vendor’s or customer’s dealings with PG&E will be affected by the response to your solicitation.”
- “Maintain the confidentiality of information entrusted to you by PG&E and our customers, except when disclosure is properly authorized or legally mandated.”

In November 2006, SCHOENFELD’s cousin (“Individual 1”) formed a limited liability company (“Company 1”), which was based in Stockton, in the State and Eastern District of California. SCHOENFELD offered to help Individual 1 obtain contracts for Company 1 in exchange for financial consideration. Individual 1 offered to pay 2.5% of the value of the contracts between Company 1 and PG&E in exchange for SCHOENFELD’s help. SCHOENFELD accepted this offer.

SCHOENFELD took several steps to further this conspiracy. SCHOENFELD facilitated introductions with decision makers at PG&E and Individual 1 to help Company 1 receive contracts from PG&E. From 2007 to 2014, SCHOENFELD provided Individual 1 with rate information of competitors of Company 1, in violation of SCHOENFELD’s duty to maintain confidentiality regarding such information. SCHOENFELD was aware of his duty to maintain confidentiality regarding such information.

In October 2008, SCHOENFELD assisted Individual 1 obtain an annual contract by and between PG&E and Company 1 worth at least \$12,000,000, in violation of PG&E’s bidding policies.

1 SCHOENFELD was aware that this contract was in violation of PG&E's bidding policies.

2 In January 2014, SCHOENFELD increased amount PG&E paid to Company 1 for moving
3 transformers from one vehicle to another from \$125 per unit to \$275 per unit without the requisite
4 PG&E internal approvals. SCHOENFELD was aware that this increase was in violation of PG&E's
5 internal approval policies.

6 In March 2014, SCHOENFELD increased the rates paid to Company 1 from \$1.30 per mile for
7 shipping to \$1.60 per mile without the requisite PG&E internal approvals. SCHOENFELD was aware
8 that this rate increase was in violation of PG&E's internal approval policies.

9 Over the course of the conspiracy, Company 1 received at least \$82,133,142 for services
10 provided to PG&E for contracts obtained through the conspiracy. Specifically, Company 1 received the
11 following payments—which originated in Louisiana, passed through Virginia or Texas, and were
12 ultimately deposited into accounts in California controlled by Company 1—on the following dates from
13 one of PG&E's billing processors:

Date of Deposit	Amount of Deposit
December 29, 2014	\$25,211.32
December 29, 2014	\$25,211.32
December 29, 2014	\$25,211.32
December 29, 2014	\$25,211.32
January 7, 2015	\$71,384.58
January 7, 2015	\$71,384.58
January 7, 2015	\$71,384.58

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21 In May 2007, SCHOENFELD caused a shell company, Diversity Transportation Inc., to be
22 created to receive "kickback" payments for his role in the conspiracy. From May 2007 to September
23 2014, SCHOENFELD received at least \$1,476,295.15 in kickback payments from Company 1 for the
24 aid he provided to Company 1. SCHOENFELD caused payroll checks to be paid to various bank
25 accounts in order to transfer the payments solicited from Individual 1. One of these bank accounts was a
26 Bank of America Joint Savings Account. As of April 14, 2015, the only proceeds in this Bank of
27 America Joint Savings Account was kickback payments from the conspiracy. On March 16, 2015 and
28 April 14, 2015, SCHOENFELD wired \$5,100 and \$2,700 to his American Express card. These funds

1 were proceeds of the conspiracy.

2 SCHOENFELD was aware his kickback arrangement was not allowed by PG&E, and he took
3 active steps to conceal his relationship with Individual 1 from PG&E. He avoided having social
4 meetings at locations where other PG&E employees might be present. He also failed to disclose his
5 familial relationship with Individual 1 in violation of his duties to PG&E. SCHOENFELD used
6 personal electronic mail to communicate with Individual 1 regarding the payments to be made pursuant
7 to this scheme to conceal their actions from PG&E.

8
9 *I have read and carefully reviewed the Factual Basis for Plea with my attorney. I agree that as it*
10 *concerns my conduct it is correct. I also agree that if this matter proceeded to trial, the United States could*
11 *establish each of the facts contained within the Factual Basis for Plea beyond a reasonable doubt, and that those*
12 *facts satisfy the elements of the offense to which I am pleading guilty.*

13 Dated: August 10, 2020

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15 RONALD STEVEN SCHOENFELD
16 Defendant
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